EX PARTE OR LATE FILED

WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005
Telephone: (202) 467-6900
Fax: (202) 467-6910
Web site: www.wcsr.com

Michael B. Hazzard
Direct Dial: (202) 857-4540
Direct Fax: (202) 261-0035
E-mail: mhazzard@wcsr.com

ORIGINAL

June 28, 2004

RECEIVED

JUN 2 8 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Meeting by Core Communications, Inc.
CC Docket No. 99-68, CPD Docket No. 01-171, and WCB Docket No. 03-171

Dear Ms. Dortch:

Pursuant to section 1.1206 of the Commission's rules, I hereby submit in the above captioned proceedings this notice of an ex parte meeting held on June 25, 2004 between Bret Mingo, Chris Van de Verg, and myself on behalf of Core Communications, Inc. ("Core") and Commissioner Abernathy, Mathew Brill, and Jeff Harris. The attached documents served as the basis of discussion. Core also discussed the merits of its pending forbearance petition and the events that led up to the filing of that petition. I am filing this notice of ex parte electronically in CC Docket No. 99-68 and in WCB Docket No. 03-171. I am filing this notice of ex parte by hand in CPD Docket No. 01-171, as electronic filing is not available in that docket.

Sincerely,

Michael B. Hazzard

Attachments

cc: Commissioner Abernathy (electronic mail)
Mathew Brill (electronic mail)
Jeff Harris (electronic mail)

TAB A

Overview of

CoreTel Communications, Inc.

Bridging the Worlds of Internet & Telecom

Founding

- Core Communications, Inc (now a subsidiary of CoreTel Communications, Inc.) was formed in August 1997
- Original goal was to provide both data and telephony services, specializing in the services that bridge the gap between traditional telephone networks and the rapidly changing data networks.

Specialization is Key

- As a small business, we realize the need to remain specialized - it is our competitive advantage, and a basic tenet of market economics.
- Part of that specialization is to remain a carrier focused on providing services on a wholesale basis - we do not provide end user services.
- Wholesale services include internet connectivity to ISPs, data server collocation, and managed modem services (both regulated and enhanced).

Creating Wholesale Channels

- All of our services are provided to service providers who in turn bundle additional services and use our wholesale product as a portion of the service they provide to their end user customers.
- Providing wholesale services to channel partners requires different productization than providing services to end users.
- Automation and integration of provisioning processes are key facets of our customers' satisfaction, and our understanding of our channel partners needs is a key part of our competitive advantage.

Regulatory Exposure

- Unfortunately, being wholesale also leaves CoreTel greatly exposed to shifting regulatory climates and rate structures
- CoreTel has a relatively small percentage of the end user value chain with which to absorb any negative change. We cannot pass on to the end user the change - they are our customers' customers.

Next Generation Wholesale Services: Connecting SIP/VoIP Services to the PSTN

- With advent of VOIP and SIP applications, and companies built around developing these applications, our focus is once again to automate and integrate provisioning for this new class of wholesale customer.
- Our business plan is to sell "a la carte" services that provide connectivity between these new application providers and the PSTN
- Target customers include ITSPs, IVR providers, interconnect vendors, PBX installers, fax bureaus: any data integrated service provider that is SIP-ready can pick and choose the wholesale service that fits their needs.

Sample VOIP/SIP Applications

- An IVR provider needs many simultaneous inbound PSTN channels, using a few telephone numbers
- A PBX installer wants an ability to provision bi-directional PSTN connected IP trunks - an IP PRI, if you will - with flexible options.
- An ISP which sells a Fax-to-Email service wants an ability to reliably provision a single number at a time, to a specific end user email account, with as low a transaction cost as possible, and without the need to inventory the service.

Deploying Soft Switch Technology

- To support these new customer needs, we have developed our own SIP-based soft switch, taking advantage of the properties of distributed data networks, rather than forcing VoIP implementations to mirror the traditional channel-switched world.
- Because of the cost of channelized switch ports, large capacity traditional switches are extraordinarily more cost effective than small ones, which leads to inefficient use of transport networks.

TAB B

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAY 1 6 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))))))	CC Docket No. 96-98

DOCKET FILE COPY ORIGINAL

COMMENTS OF BELL ATLANTIC

Edward D. Young, III
Of Counsel

Michael E. Glover
Leslie A. Vial
James G. Pachulski
Lydia Pulley
1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-2944

Attorneys for Bell Atlantic

May 16, 1996

No. of Copies rec'd
List ABCDE

A similar proxy is available to the extent LECs already offer elements under effective tariffs at either the federal or state level. For example, some network elements, such as dedicated transport, common transport, tandem switching, and collocation cross-connects already are available under special access tariffs of switched access, while other network elements, such as unbundled local switch ports, already are available under state approved, cost-based tariffs. Under these circumstances, the rates contained in the tariffs also should be treated as presumptively lawful for purposes of section 251.

IX. The Reciprocal Compensation Provision of the Act Requires, at a Minimum, that Carriers be Allowed to Recover the Cost to Terminate Calls on Their Networks

The Act also imposes a duty on all local exchange carriers -- incumbents and new entrants alike -- to establish reciprocal compensation arrangements for the "transport and termination" of telecommunications. 47 U.S.C. § 251(b)(5). In contrast to the interconnection provision in section 252(d)(2), which applies to the physical connection between the competing networks, the reciprocal compensation provision applies only to the transport and termination of local calls that originate on another carrier's network once the physical connection has been established. The reciprocal compensation provision is accompanied by a separate pricing standard -- to be applied by state commissions in any arbitration proceedings under section 252 -- that is tailored to the particular circumstances when it applies.

Specifically, the Act provides that a state commission shall not consider such arrangements to be just and reasonable <u>unless</u> they provide for the mutual and reciprocal recovery by each carrier of the additional costs incurred to terminate calls that originate on the other carrier's network. 47 U.S.C. § 252(d)(2)(A). Unlike the pricing standard for interconnection and access to network elements, this provision does not require that the price ultimately set be "based on cost," but instead establishes a price minimum. Accordingly, the parties must, at a minimum, be able to recover their costs on a reciprocal basis. Precisely because these arrangements are reciprocal, however, and each party must pay the other reciprocal rates, the Act establishes only a minimum, and leaves it to the parties to determine the precise terms above this minimum.

The Act also permits a limited exception to this general rule. The pricing standard does not "preclude" arrangements between the parties that allow the recovery of cost through the "offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)." Section 252(d)(2)(B)(i) (emphasis added). By its very terms, this provision creates an exception to the right to recover the costs of transporting and terminating calls only where the parties voluntarily waive this right. In fact, by definition, the term "waive" means to "relinquish voluntarily (as a legal right)." See Webster's Third New International Dictionary (1993); see also Black's Law Dictionary (6th ed. 1990) "([t]o give up [a] right or claim voluntarily"). It does not, however, permit arrangements such as bill and keep to be imposed by regulatory mandate, whether in the context of an arbitration or as an interim measure. NPRM at ¶ 243.

Moreover, because bill and keep requires LECs to incur the cost of terminating traffic over their networks but precludes them from recovering these costs, a mandated bill and keep arrangement would constitute a taking in violation of the Fifth Amendment. A bill and keep arrangement would permit local competitors to occupy the LECs' facilities -- wires and switches -- in much the same way that an easement allows the holder to occupy part of a landowner's property. See Nollan v. California Coastal Comm'n, 483 U.S. 825, 831-31 (1987). And it would allow them to do so at a zero rate that would leave the LECs without any compensation for the cost imposed on them by this occupation of their property. As a result, a regulatorily mandated bill and keep arrangement simply cannot pass constitutional muster. See Richard A. Epstein, The FCC Bill and Keep Order: A Takings Analysis, CC Docket No. 95-185 (May 16, 1996). Since it is well established that "[w]ithin the bounds of fair interpretation, statutes will be construed to defeat administrative orders that raise substantial constitutional questions," the Commission cannot interpret the Act to permit mandatory bill and keep compensation schemes. Bell Atlantic Telephone Companies v. FCC, 24 F.3d 1441, 1445 (D.C. Cir. 1994); see also Rust v. Sullivan, 500 U.S. 173, 190-91 (1991).

Nor would mandating bill and keep make sense from an economic or policy standpoint, even if such mandatory arrangements were not already forbidden by the Act and the Constitution. Mandating bill and keep would force LECs to terminate calls on their networks at a zero rate that is unquestionably below cost. This would create a subsidy for competing providers like AT&T, MCI, MFS, Teleport, TCI, Time Warner, and the nation's largest cable companies, who by no stretch of the imagination are in need of one. It would do so, moreover, at a time that Congress has directed the Commission to eliminate hidden subsidies, and would force the LECs' other customers to bear the cost of this subsidy. And because bill and keep frees a competing provider from any accountability for the costs it imposes on the incumbent LEC, bill and keep eliminates any incentive to use the LECs' termination service efficiently and will lead to economically wasteful behavior. Hausman Aff. at 9-10.

Presuming bill and keep is rejected, as it must be, the notice asks whether there is a readily available proxy that could be used by state commissions to benchmark the reasonableness of reciprocal compensation rates. NPRM at ¶ 234. As discussed above, given the wide variations in the industry, any fixed proxy is problematic and must allow for individual variations. Nonetheless, it may be possible to derive a proxy for a presumptively lawful reciprocal compensation rate from existing access charges. According to the Commission, for example, the national average charge for switched access is approximately 1 cent per minute (once the CCLC and RIC are deducted), plus an additional 2 tenths of a cent per minute for tandem switching and transport when a call terminates at an access tandem. See Bill and Keep NPRM at n.83. These rates were initially established based upon regulatorily prescribed costs, and have been subject in most cases to price caps for over 5 years. NPRM at ¶ 234. As a result, any reciprocal compensation rate that is set at or below these levels should be presumed lawful, without a further showing.

These numbers also answer an additional question raised by the notice: Whether the reciprocal compensation rates paid by competing carriers to one another must be symmetrical in every instance, by which the notice apparently means "the same." NPRM at ¶ 235. There is one instance in which the answer is clearly no. The reciprocal compensation rate for calls delivered to an access tandem -- for which the terminating carrier will incur the cost of tandem switching and transport -- should be allowed to be higher than for calls delivered to an end office -- which do not incur those additional costs. MFS Intelenet, Case No. 8584, Phase II, Order No. 72348 (Dec. 28, 1995) at 31. This would allow LECs to more accurately reflect their underlying cost structure. And by permitting an originating carrier to obtain a lower rate by opting to deliver traffic at the end office as traffic volumes grow, it would also provide correct economic incentives to make efficient use of the terminating carriers network, and thereby help to avoid inefficient overloading of tandem switches.

X. The Commission Should Not Adopt Resale Rules that Inhibit Negotiations or Preempt State Authority Over Resale

As with the other parts of section 251, the resale provision relies upon negotiations between the parties, and state arbitrations where negotiations fail. In order to allow this process to work as Congress intended, the Commission should limit any regulations it adopts to implement the resale provision to the following general guidelines.

A. Discounts Should be Based Upon Net Avoided Costs; Avoided Retail Costs Should Be Offset by Costs to Provide Wholesale Services

The Commission has correctly noted that avoided costs should be determined on a "net" basis. Any marketing, billing, collection, and similar costs that are associated with offering retail services should therefore be "offset by any portion of those expenses that [LECs] incur in the provision of wholesale services." NPRM at ¶ *180*. This conclusion is sound because a LEC providing retail telecommunications services to resellers must incur costs to market, bill and collect for those services.

Because wholesale services may be provided in several different ways, moreover, the expenses associated with doing so will likely vary across resellers. For example, high volume resellers may order wholesale service through electronic interfaces while other resellers may rely on manual processes, such as telephone calls and faxes. The Commission's guidelines should therefore allow the parties to negotiate the costs of providing wholesale services as either a reduction to wholesale discounts or as separate charges. They should not attempt to prescribe a cookie cutter formula for setting wholesale rates.

B. State Commissions Must Be Permitted to Impose Reasonable Class of Service Restrictions

The Act preserves the authority of states to "prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." 47 U.S.C. § 251(c)(4)(B). As an example of a reasonable resale restriction, the Commission correctly states that Congress never intended to allow competing carriers to purchase a service offered at subsidized prices to a specified category of subscribers and then resell it to customers that are not eligible for the subsidized service. NPRM at ¶ 176. The Commission's guidelines should therefore preserve state authority to impose reasonable class of service restrictions.

Preempting state authority to impose such restrictions, on the other hand, would place LECs at a severe competitive disadvantage and undermine their existing rate structures. For example, business rates generally are higher than residential rates for comparable services in order to subsidize these latter customers. If services could be purchased at wholesale residential rates and resold to business customers, the LEC's higher business rates would no longer be competitive and the public policy basis for separate residential and business retail rates would be undermined.

C. Wholesale Pricing Obligations Do Not Apply to Discount and Promotional Offerings

Any Commission guidelines should make clear that the obligation to offer services for resale at wholesale rates extends only to the incumbent LEC's standard retail

TAB C

ORIGINAL

RECEIVED

MAY 30 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))))))	CC Docket No. 96-98

REPLY COMMENTS OF BELL ATLANTIC

Edward D. Young, III
Of Counsel

Michael E. Glover
Leslie A. Vial
James G. Pachulski
Lawrence W. Katz
Lydia Pulley
1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-2944

Attorneys for Bell Atlantic

May 30, 1996

No. of Copies rec'd 0+4
List ABCDE

recovering their total costs would constitute an unauthorized taking of the LECs' property. Epstein Decl. at 2 (attached as Exh. 2). Nonetheless, the proponents of incremental cost pricing claim that there can be no taking when revenues are lost to competition. Perhaps so. But that is not the issue here. The issue here is whether government regulators can mandate prices that deny LECs the ability to recover costs they have actually incurred. They cannot. See, e.g., Duquesne Light Co. v. Barasch, 488 U.S. 299, 308 (1989); Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168, 1178 (D.C. Cir. 1987) (en banc)

VII. Prices for Reciprocal Compensation Cannot Be Set At Zero

The most blatant example of a plea for a government handout comes from those parties who urge the Commission to adopt a reciprocal compensation price of zero, which they euphemistically refer to as "bill and keep." A more appropriate name, however, would be "bilk and keep," since it will bilk the LECs' customers out of their money in order to subsidize entry by the likes of AT&T, MCI, and TCG. As we demonstrated in our opening comments, a regulatorily mandated price of zero -- by any name -- would violate the Act, the Constitution, and sound economic principles. See Bell Atlantic Br. at 40-42.

Indeed, the proponents of bill and keep appear to recognize the flaws in their proposal, and shift their focus here to arguing that the FCC should mandate bill and keep as an "interim" pricing mechanism, and as a default price when parties do not agree to a different rate. AT&T Br. at 69; MCI Br. at 52-53; TCG Br. at 83-84.[19] This will create a "threat point," so the

[19] Some parties also have suggested that the cost to terminate calls during off-peak periods is very low, and that setting prices at zero during those periods is close enough. In reality, while setting different peak and off-peak prices may make sense in some contexts, here it would merely encourage providers to find ways to modify their traffic flows -- and thereby effectively change the peak -- in order to take advantage of the zero rates while forcing LECs to incur peak load costs. Under these circumstances, peak and off-peak users must share the costs

argument goes, that will encourage LECs to negotiate reasonable rates for reciprocal compensation. But whether they are termed interim or permanent, mandatory bill and keep arrangements suffer from the same flaws, and simply cannot be squared with the Act's mandate that LECs be permitted to recover their costs absent a voluntary waiver of that right. Bell Atlantic Br. at 42. Nor will adopting bill and keep as a mandatory solution encourage parties to negotiate a reasonable price. It will do the opposite So long as competitors know that they can get a zero rate if they do not agree to something else, the result will be bill and keep in every case.

Moreover, the notion that bill and keep is necessary to prevent LECs from demanding too high a rate reflects a fundamental misunderstanding of the market. If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominantly inbound, such as credit card authorization centers and internet access providers. The LEC would find itself writing large monthly checks to the new entrant. By the same token, setting rates too low will merely encourage new entrants to sign up customers whose calls are predominantly outbound, such as telephone solicitors. Ironically, under these circumstances, the LECs' current customers not only would subsidize entry by competitors, but would subsidize low rates for businesses they may well not want to hear from

of capacity, and it would be irrational to set a price of zero during any period. See Kahn, The Economics of Regulation, Vol. 1 at 91-93.

TAB D

DC01/CARRE/210476.1

CORE-VERIZON INTERCONNECTION TIMELINE

1999	Core begins substantial investment for implementation of its business plan in Delaware, New York and Pennsylvania.
February 2000	Core requests interconnection with Verizon in Philadelphia.
June 2000	Core requests interconnection with Verizon in Pittsburgh and New York City.
April 2001	FCC issues *ISP Remand Order* – growth cap and new market bar apply for all carriers that were not exchanging traffic pursuant to an interconnection agreement prior to **April 18, 2001**.
April 2001	**14 months** after Core's request, Verizon completes interconnection with Core in Philadelphia. Core begins to offer service in Philadelphia.
June 2001	**12 months** after Core's request, Verizon completes interconnection with Core in Pittsburgh and New York City. Core begins to offer service in Pittsburgh and New York City.
February 2004	Maryland Public Service Commission finds Verizon "violat[ed] the standards of the [interconnection agreement, incorporating the 1996 Act,] that require interconnection equal in quality; at a technically feasible point; and that is just, reasonable and nondiscriminatory; in addition to fail[ing] to meet a commercially reasonable standard of good faith."